

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION (WORCESTER)**

MICHAEL DAWE
Plaintiff,

V.

CAPITAL ONE BANK
Defendant.

CASE NO. 04-40192 FDS

**JOINT MOTION TO CONTINUE
SCHEDULING CONFERENCE**

Plaintiff Michael Dawe and defendant Capital One Bank move to reschedule the Scheduling Conference presently scheduled for 3:00 P.M. on February 16, 2005, until such date as the Court determines after a ruling is issued on Capital One's pending motion for partial summary judgment. In support hereof, the parties state as follows:

1. Following a status conference in this case on October 12, 2005, counsel for both parties agreed that this case may turn on a narrow, legal issue: whether the state court's judgment extinguished a debt allegedly owed by Mr. Dawe to Capital One. Accordingly, on October 19, 2005, the parties filed a Joint Motion for Extension of Discovery Cutoff ("Joint Motion") requesting a modification of the scheduling order to permit the parties to brief a motion for partial summary judgment on this central issue.

2. On October 21, 2005, the Court allowed the Joint Motion and vacated the existing scheduling order, staying discovery pending further order of the Court, directing that a motion for partial summary judgment be filed, if at all, by December 12, 2005, with any opposition to be filed by December 30, 2005, and scheduling on February 16, 2006, a further scheduling conference "to determine whether additional discovery or motion practice will be needed and, if so to set appropriate deadlines."

3. Following the Court's allowance of Capital One's motion for a brief extension to the summary judgment filing schedule, Capital One filed a motion for partial summary judgment on December 19, 2005, and Dawe filed his opposition thereto on January 9, 2006. To date, a hearing on Capital One's motion has not been scheduled and no ruling has been issued.

4. As they noted in the Joint Motion, the parties remain hopeful that this case will resolve once the Court decides the narrow issue presented by Capital One's motion for partial summary judgment. By filing the Joint Motion, the parties evidenced their preference for proceeding in an efficient and cost-effective manner, and their interest in resolving this case without unnecessary expense and without unnecessary expenditure of judicial resources. In any event, a determination of whether additional discovery or motion practice will be needed in this case and how much time will be needed to complete discovery and further motions will benefit from a postponement of the scheduling conference until the pending motion has been argued and decided.

5. Accordingly, the parties request that the Court postpone the scheduling conference presently scheduled for February 16, 2006, until such time as a decision on Capital One's motion for partial summary judgment is issued by the Court.

MICHAEL DAWE

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CAPITAL ONE BANK

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